raised by the defence. It was submitted that in these circumstances the judge should have applied the second limb of section 304 of the Penal Code which provided for a maximum punishment of 10 years imprisonment or with fine or with both "if the act (by which death is caused) is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death." It was submitted that the judge should not fix the sentence on facts which did not reflect the verdict of the jury.

As stated earlier, the main defence in this case was diminished responsibility. The other defences of the appellant were defences which on the evidence a reasonable jury would reject. On the evidence in this case we were left in no doubt that the jury reduced the crime of murder to one of culpable homicide not amounting to murder on the ground of diminished responsibility and we accordingly dismissed the appeal against sentence.

This appeal gives us an opportunity for suggesting a rule of practice in cases where on a charge of murder a defence of diminished responsibility and some other defence such as grave and sudden provocation are raised. If the jury return a verdict of culpable homicide not amounting to murder the judge, to enable him to assess the sentence he ought to impose, may and should generally then ask whether their verdict is based on diminished responsibility or on the other ground or on both.

Appeal dismissed.

Solicitors: *S.K. Lee & Co.*

MOHAMED HASHIM v. LIM AH TOO & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) June 13, 1969]

[Singapore—Federal Court Civil Appeal No. Y54 of 1968]

Negligence — Contributory negligence — Duty of Care.

This was an appeal against the decision of the High Court which gave judgment against the appellant for negligence arising out of an accident between a motor taxi driven by the appellant and a motor taxi driven by the second respondent. It was argued on appeal that the second respondent was guilty of contributory negligence.

Held: on the facts the second respondent had not in his own interest taken reasonable care of himself and had contributed by this want of care to his own injury; in the circumstances the fault should be apportioned as to one fourth to the second respondent and three fourths to the appellant.

FEDERAL COURT.

Yap Tyou Min for the appellant/1st defendant.

M.P.D. Nair for the respondents/plaintiffs.

Cur. Adv. Vult.

The judgment of the court was delivered by —

Tan Ah Tah F.J.: In this case the first plaintiff was at all material times the owner of taxi No. SH 2598 which was driven by the second plaintiff along Changi Road near the 12½ milestone towards the city at about 1.30 p.m. on 12th April, 1965 when it came into collision with taxi No. SH 4551 which was driven by the first defendant and was travelling in the opposite direction towards Changi Point.

By their statement of claim the plaintiffs alleged that the second defendant was at all material times the owner of taxi No. SH 4551. The plaintiffs therefore claimed damages against both the defendants. The learned trial judge awarded the second plaintiff the sum of $1,200 as general damages and the sum of $1,298 as special damages against the first defendant. He also gave judgment in the agreed sum of $4,165 in favour of the first plaintiff against the first defendant. The claim by the first plaintiff against the second defendant was dismissed with costs as no evidence had been given to show that the second defendant was the owner of taxi No. SH 4551 or that the first defendant was his servant or agent. The first defendant has now brought this appeal against the judgment of the learned trial judge.

The second plaintiff's version of the accident was as follows. As he was driving along Changi Road, the first defendant's taxi, which was travelling in the opposite direction, overtook a moving bus and in doing so went over the broken white line in the centre of the road into his path and collided with his taxi. He first saw the on-coming taxi when it was about 30 feet away. He was then driving along the middle of his side of the road at a speed of about 30 miles per hour. He applied his brakes violently and swerved to the left but was unable to avoid the collision.

The first defendant gave the following version of the accident. As he was driving his taxi along Changi Road to Changi Point he saw the second plaintiff's taxi approaching him when it was 200 yards away. There was a car 100 yards ahead of him which passed the second plaintiff's taxi when it was 100 yards away from him. The second plaintiff's taxi, which was being driven unsteadily, came on to the first defendant's side of the road. The first defendant applied his brakes but the second

plaintiff's taxi came right in front of him and there was a collision between the two taxis as a result of which the first defendant's taxi was spun round in a clockwise direction. When the first defendant applied his brakes he was 16 feet away from the second plaintiff's taxi.

In connection with the first defendant's version of the accident it is relevant to note that the brake marks made by his taxi were 66 feet 6 inches in length and he was unable to explain why they were so long.

After considering the two versions and the other evidence in the case, the learned trial judge made a finding of fact that the first defendant encroached on the second plaintiff's path by crossing the centre white line immediately before the accident. The learned trial judge came to the conclusion that the first defendant was wholly to blame for the collision.

Counsel for the first defendant commenced his argument before us by attempting to show that the learned trial judge had erred in finding as a fact that the first defendant's taxi had gone to its wrong side of the road. We are of the opinion that there is no substance in the submissions of counsel for the first defendant on this point.

Counsel for the first defendant went on to argue that the second plaintiff was guilty of contributory negligence.

Before considering this argument, it is useful to refer to the following passage from 28 *Halsbury's* Laws 3rd edition pp. 89, 90 para. 93 which, in our view, correctly sets out the law to be applied to this case:—

"The existence of contributory negligence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish a plea of contributory negligence is to prove that the injured party did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury.

The principle involved is that, where a man is part author of his own wrong, he cannot call on the other party to compensate him in full. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent man, he might hurt himself."

In the present case the evidence shows that the two taxis were on a straight stretch of road and that visibility was good. The fact that the first defendant's taxi left brake marks which were 66 feet and 6 inches in length on the road indicates that the first defendant swerved to the right some distance before the commencement of the brake marks. In spite of this, the second plaintiff did not see the on-coming taxi until it was about 30 feet away from him. There is also the fact which was found by the learned trial judge that the first defendant's taxi did not encroach very far into the wrong side of the road. In view of all these considerations, we are of the opinion that the second plaintiff did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury.

In the circumstances of this case we apportion the fault as to one-fourth to the second plaintiff and as to three-fourths to the first defendant. The damages awarded to the second plaintiff should be reduced accordingly. The evidence shows that the second plaintiff was not a servant of the first plaintiff; the second plaintiff had hired the taxi from the first plaintiff and was driving it for the purpose of carrying passengers for profit on his own account. The damages awarded to the first plaintiff therefore remain unaltered.

The appeal is allowed to this extent and the judgment of the learned trial judge varied in the manner indicated.

Appeal partly allowed.

Solicitors: *Battenberg & Talma; M.P.D. Nair.*

THAMBIPILLAI v. THE GOVERNMENT OF MALAYSIA

[O.C.J. (Wan Suleiman J.) June 15, 1969]
[Alor Star — Civil Suit No. 219 of 1966]

Administrative Law — Compulsory retirement — Whether dismissal — Whether termination of service amounts to punishment — Pensions Ordinance, 1951, s. 10(a) — Constitution of Malaysia, art. 135(2).

In this case the plaintiff who was 58½ years old was required to retire under section 10(a) of the Pensions Ordinance, 1951. The plaintiff contended that he was entitled to remain in service until he had attained the age of 60 years, in accordance with the service circular No. 6 of 1961, and that therefore the compulsory retirement was bad in law and therefore void and inoperative

Held: (1) the decision to retire the plaintiff could validly be made under section 10(a) of the Pensions Ordinance by the Principal Establishment Officer under powers delegated to him by the Yang di-Pertuan Agong;

(2) the compulsory retirement under section 10(a) of the Pensions Ordinance is not equivalent to dismissal and the plaintiff was therefore not entitled to be given a reasonable opportunity of being heard before he was compulsorily retired

Cases referred to:—

(1) *Shyamlal* v. *State of Utter Pradesh* A.I.R. 1954 S.C. 369; [1955] 1 S.C.R. 26.

(2) *P.L. Dhingra* v. *Union of India* A.I R 1958 S.C. 36; [1958] S.C.R. 828.